State/location	Community No.	Effective date of eligibility	Current effective map date
Blackfoot, city of, Bingham County	160019	.....do	Do.
Bingham County, unincorporated areas	160018	.....do	Do.

[1] The City of Deltona has adopted the Volusia County (CID# 125155) Flood Insurance Rate Map dated February 2, 1996.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Supp.—Suspension; With.—Withdrawn; NSFHA—Non Special Flood Hazard Area.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Issued: February 13, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–5177 Filed 2–26–98; 8:45 am]

BILLING CODE 6718–05–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1802, 1803, 1804, 1805, 1814, 1815, 1816, 1817, 1832, 1834, 1835, 1842, 1844, 1852, 1853, 1871, and 1872

Contracting by Negotiation

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: This is an interim rule amending the NASA FAR Supplement (NFS) parts to conform to the regulatory changes effected by Federal Acquisition Circular (FAC) 97–02, FAR Part 15 Rewrite; reflect the expiration of the waiver to the requirement to publish synopsis in the Commerce Business Daily for certain acquisitions under NASA's MidRange procedures; and specify that the NASA Acquisition Internet Service (NAIS) is the Agency Internet site for posting solicitations and other acquisition information.

DATES: This rule is effective February 27, 1998. All comments on this rule should be in writing and must be received by April 28, 1998.

ADDRESSES: Tom O'Toole, Code HK, NASA Headquarters, 300 E Street, SW., Washington, DC 20456–0001.

FOR FURTHER INFORMATION CONTACT: Tom O'Toole, (202) 358–0478.

SUPPLEMENTARY INFORMATION:

A. Background

FAC 97–02, published in the **Federal Register** (62 FR 51224) on September 30, 1997, completely revised FAR part 15, Contracting by Negotiation. The final rule allowed agencies to delay implementation until January 1, 1998. The NASA FAR Supplement (NFS) is in substantive compliance with the revised FAR, but extensive redesignation of NFS subparts and sections is required for structural conformance. Accordingly, NFS part 1815, Contracting by Negotiation, is revised in its entirety, and parts 1852, Solicitation Provisions and Contract Clauses, and 1853, Forms, are amended. Regulatory references in other parts are also amended to reflect revised FAR numbering. In addition, NASA is revising its MidRange procedures in part 1871 to reflect the expiration of the waiver of the requirement to publish synopses in the Commerce Business Daily for certain acquisitions under NASA's MidRange procedures. Previously, these synopses had been posted only on the Internet. Finally, changes are made to indicate that the NASA Acquisition Internet Service (NAIS) is the single Agency Internet site for posting solicitations and other acquisition information. NASA considers all these revisions to be either administrative or editorial, and no significant changes in Agency policy are implemented.

B. Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

C. Interim Rule

In accordance with 41 U.S.C. 418b(d), NASA has determined that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This determination is made on the following bases: (1) The required implementation date of the revised FAR part 15 is January 1, 1998; (2) NFS part 1815 coverage is of critical importance to the effective and efficient accomplishment of NASA acquisitions; and (3) the substance of the NFS coverage was published previously for public comment in the **Federal Register** (61 FR 52325) on October 7, 1996.

Lists of Subjects in 48 CFR Parts 1801, 1802, 1803, 1804, 1805, 1814, 1815, 1816, 1817, 1832, 1834, 1835, 1842, 1844, 1852, 1853, 1871, and 1872

Government procurement.

Deidre A. Lee,

Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1801, 1802, 1803, 1804, 1805, 1814, 1815, 1816, 1817, 1832, 1834, 1835, 1842, 1844, 1852, 1853, 1871, and 1872 are amended as follows:

1. The authority citation for 48 CFR Parts 1801, 1802, 1803, 1804, 1805, 1814, 1815, 1816, 1817, 1832, 1834, 1835, 1842, 1844, 1852, 1853, 1871, and 1872 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. In section 1801.106, paragraph (1) is revised to read as follows:

1801.106 OMB approval under the Paperwork Reduction Act. (NASA paragraphs (1) and (2))

(1) NFS requirements. The following OMB control numbers apply:

NFS segment	OMB control No.
1819	2700–0073
1819.72	2700–0078
1827	2700–0052
1843	2700–0054
NF 533	2700–0003
NF 667	2700–0004
NF 1018	2700–0017

* * * * *

PART 1802—DEFINITIONS OF WORDS AND TERMS

3. In section 1802.101, the following definition is added in alphabetical order to read as follows:

1802.101 Definitions.

NASA Acquisition Internet Service (NAIS) means the Internet service (URL: hhtp://procurement.nasa.gov) NASA uses to broadcast its business opportunities, procurement regulations, and associated information.

PART 1804—ADMINISTRATIVE MATTERS

Subpart 1804.5—[Added]

4. Subpart 1804.5 is added to read as follows:

Subpart 1804.5—Electronic Commerce in Contracting

1804.570 NASA Acquisition Internet Service (NAIS).

1804.570–1 General.

The NASA Acquisition Internet Service (NAIS) provides an electronic means for posting procurement synopses, solicitations, procurement regulations, and associated information on the Internet.

1804.570–2 Electronic posting system.

(a) The NAIS Electronic Posting System (EPS) enables the NASA procurement staff to:

(1) Electronically create and post synopses on the Internet and in the Commerce Business Daily (CBD); and

(2) Post solicitation documents and other procurement information on the Internet.

(b) The EPS maintains an on-line index linking the posted synopses and solicitations for viewing and downloading.

(c) The EPS shall be used to:

(1) Create and post all synopses in accordance with FAR part 5 and NFS 1805; and

(2) Post all competitive solicitation files, excluding large construction and other drawings, for acquisitions exceeding $25,000.

(d) The NAIS is the official site for solicitation postings. In the event supporting materials, such as program libraries, cannot be reasonably accommodated by the NAIS, Internet sites external to NAIS may be established after coordination with the Contracting Officer. Such sites must be linked from the NAIS business opportunities index where the solicitations reside. External sites should not duplicate any of the files residing on the NAIS.

PART 1805—PUBLICIZING CONTRACT ACTIONS

1805.201 [Removed]

5. Section 1805.201 is removed.

6. In section 1805.207, paragraph (a) is added to read as follows:

1805.207 Preparation and transmittal of synopses. (NASA supplement paragraph (a))

(a) Synopses shall be transmitted in accordance with 1804.570.

PART 1815—CONTRACTING BY NEGOTIATION

7. Part 1815 is revised to read as follows:

PART 1815—CONTRACTING BY NEGOTIATION

Subpart 1815.2—Solicitation and Receipt of Proposals and Information

1815.201 Exchanges with industry before receipt of proposals.
1815.203 Requests for proposals.
1815.203–70 Installation reviews.
1815.203–71 Headquarters reviews.
1815.204 Contract format.
1815.204–2 Part I—The Schedule.
1815.204–5 Part IV—Representations and instructions.
1815.204–70 Page limitations.
1815.207 Handling proposals and information.
1815.207–70 Release of proposal information.
1815.207–71 Appointing non-Government evaluators as special Government employees.
1815.208 Submission, modification, revision, and withdrawal of proposals.
1815.209 Solicitation provisions and contract clauses.
1815.209–70 NASA solicitation provisions.

Subpart 1815.3—Source Selection

1815.300 Scope of subpart.
1815.300–70 Applicability of subpart.
1815.303 Responsibilities.
1815.304 Evaluation factors and significant subfactors.
1815.304–70 NASA evaluation factors.
1815.305 Proposal evaluation.
1815.305–70 Identification of unacceptable proposals.
1815.305–71 Evaluation of a single proposal.
1815.306 Exchanges with offerors after receipt of proposals.
1815.307 Proposal revisions.
1815.308 Source selection decision.
1815.370 NASA source evaluation boards.

Subpart 1815.4—Contract Pricing

1815.403 Obtaining cost or pricing data.
1815.403–1 Prohibition on obtaining cost or pricing data.
1815.403–170 Acquisitions with the Canadian Commercial Corporation (CCC).
1815.403–3 Requiring information other than cost or pricing data.
1815.403–4 Requiring cost or pricing data.
1815.404 Proposal analysis.
1815.404–2 Information to support proposal analysis.
1815.404–4 Profit.
1815.404–470 NASA structured approach for profit or fee objective.
1815.404–471 Payment of profit or fee under letter contracts.
1815.406 Documentation.
1815.406–1 Prenegotiation objectives.
1815.406–170 Content of the prenegotiation position memorandum.
1815.406–171 Installation reviews.
1815.406–172 Headquarters reviews.
1815.406–3 Documenting the negotiation.
1815.407 Special cost or pricing areas.
1815.407–2 Make-or-buy programs.
1815.408 Solicitation provisions and contract clauses.
1815.408–70 NASA solicitation provisions and contract clauses.

Subpart 1815.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

1815.504 Award to successful offeror.
1815.506 Postaward debriefing of offerors.
1815.506–70 Debriefing of offerors—Major System acquisitions.

Subpart 1815.6—Unsolicited Proposals

1815.602 Policy.
1815.604 Agency points of contact.
1815.606 Agency procedures.
1815.606–70 Relationship of unsolicited proposals to NRAs.
1815.609 Limited use of data.
1815.609–70 Limited use of proposals.
1815.670 Foreign proposals.

Subpart 1815.70—Ombudsman

1815.7001 NASA Ombudsman Program.
1815.7002 Synopses of solicitations and contracts.
1815.7003 Contract clause.

Authority: 42 U.S.C. 2473(c)(1).

Subpart 1815.2—Solicitation and Receipt of Proposals and Information

1815.201 Exchanges with industry before receipt of proposals. (NASA supplements paragraphs (c) and (f))

(c)(6)(A) Except for acquisitions described in 1815.300–70(b) contracting officers shall issue draft requests for proposals (DRFPs) for all competitive negotiated acquisitions expected to exceed $1,000,000 (including all options or later phases of the same project). DRFPs shall invite comments from potential offerors on all aspects of the draft solicitation, including the requirements, schedules, proposal instructions, and evaluation approaches. Potential offerors should be specifically requested to identify unnecessary or inefficient requirements. When considered appropriate, the statement of work or the specifications may be issued in advance of other solicitation sections.

(B) Contracting officers shall plan the acquisition schedule to include adequate time for issuance of the DRFP, potential offeror review and comment, and NASA evaluation and disposition of the comments.

(C) When issuing DRFPs, potential offerors should be advised that the DRFP is not a solicitation and NASA is not requesting proposals.

(D) Whenever feasible, contracting officers should include a summary of the disposition of significant DRFP comments with the final RFP.

(E) The procurement officer may waive the requirement for a DRFP upon written determination that the expected benefits will not be realized given the name of the supply or service being acquired. The DRFP shall not be waived because of poor or inadequate planning.

(f)(i) Upon release of the formal RFP, the contracting officer shall direct all personnel associated with the acquisition to refrain from communicating with prospective offerors and to refer all inquiries to the contracting officer or other authorized representative. This procedure is commonly known as a ''blackout notice'' and shall not be imposed before release of the RFP. The notice may be issued in any format (e.g., letter or electronic) appropriate to the complexity of the acquisition.

(ii) Blackout notices are not intended to terminate all communication with offerors. Contracting officers should continue to provide information as long as it does not create an unfair competitive advantage or reveal proprietary data.

1815.203 Requests for proposals.

1815.203–70 Installation reviews.

(a) Installations shall establish procedures to review all RFPs before release. When appropriate given the complexity of the acquisition or the number of offices involved in solicitation review, centers should consider use of a single review meeting called a Solicitation Review Board (SRB) as a streamlined alternative to the serial or sequential coordination of the solicitation with reviewing offices. The SRB is a meeting in which all offices having review and approval responsibilities discuss the solicitation and their concerns. Actions assigned and changes required by the SRB shall be documented.

(b) When source evaluation board (SEB) procedures are used in accordance with 1815.370, the SEB shall review and approve the RFP prior to issuance.

1815.203–71 Headquarters reviews.

For RFPs requiring Headquarters review and approval, the procurement officer shall submit ten copies of the RFP to the Associate Administrator for Procurement (Code HS). Any significant information relating to the RFP or the planned evaluation methodology omitted from the RFP itself should also be provided.

1815.204 Contract format.

1815.204–2 Part I—The Schedule. (NASA supplements paragraph (c))

(c) To the maximum extent practicable, requirements should be defined as performance based specifications/statements of work that focus on required outcomes or results, not methods of performance or processes.

1815.204–5 Part IV—Representations and instructions. (NASA supplements paragraph (b))

(b) The information required in proposals should be kept to the minimum necessary for the source selection decision.

1815.204–70 Page limitations.

(a) Technical and contracting personnel will agree on page limitations for their respective portions of an RFP. Unless approved in writing by the procurement officer, the page limitation for the contracting portion of an RFP (all sections except Section C, Description/specifications/work statement) shall not exceed 150 pages, and the page limitation for the technical portion (Section C) shall not exceed 200 pages. Attachments to the RFP count as part of the section to which they relate. In determining page counts, a page is defined as one side of a sheet, 8½″ x 11″, with at least one inch margins on all sides, using not smaller than 12-point type. Foldouts count as an equivalent number of 8½″ x 11″ pages. The metric standard format most closely approximating the described standard 8½″ x 11″ size may also be used.

(b) Page limitations shall also be established for proposals submitted in competitive acquisitions. Accordingly, technical and contracting personnel will agree on page limitations for each portion of the proposal. Unless a different limitation is approved in writing by the procurement officer, the total initial proposal, excluding title pages, tables of content, and cost/price information, shall not exceed 500 pages using the page definition of 1815.204–70(a). Firm page limitations shall also be established for final proposal revisions, if requested. The appropriate page limitations for final proposal revisions should be determined by considering the complexity of the acquisition and the extent of any discussions. The same page limitations shall apply to all offerors. Pages submitted in excess of specified limitations will not be evaluated by the Government and will be returned to the offeror.

1815.207 Handling proposals and information.

1815.207–70 Release of proposal information.

(a) NASA personnel participating in any way in the evaluation may not reveal any information concerning the evaluation to anyone not also participating, and then only to the extent that the information is required in connection with the evaluation. When non-NASA personnel participate, they shall be instructed to observe these restrictions.

(b)(1) Except as provided in paragraph (b)(2) of this section, the procurement officer is the approval authority to disclose proposal information outside the Government. This authorization may be granted only after compliance with FAR 37.2 and 1837.204, except that the determination of unavailability of Government personnel required by FAR 37.2 is not required for disclosure of proposal information to JPL employees.

(2) Proposal information in the following classes of proposals may be disclosed with the prior written approval of a NASA official one level above the NASA program official responsible for overall conduct of the evaluation. The determination of unavailability of Government personnel required by FAR 37.2 is not required for disclosure in these instances.

(i) NASA Announcements of Opportunity proposals;

(ii) Unsolicited proposals;

(iii) NASA Research Announcement proposals;

(iv) SBIR and STTR proposals.

(3) If JPL personnel, in evaluating proposal information released to them by NASA, require assistance from non-JPL, non-Government evaluators, JPL must obtain written approval to release the information in accordance with paragraphs (b)(1) and (b)(2) of this section.

1815.207–71 Appointing non-Government evaluators as special Government employees.

(a) Except as provided in paragraph (c) of this section, non-Government evaluators, except employees of JPL, shall be appointed as special Government employees.

(b) Appointment as a special Government employee is a separate action from the approval required by paragraph 1815.207–70(b) and may be processed concurrently. Appointment as a special Government employee shall be made by:

(1) The NASA Headquarters personnel office when the release of proposal information is to be made by a NASA Headquarters office; or

(2) The installation personnel office when the release of proposal information is to be made by the installation.

(c) Non-Government evaluators need not be appointed as special Government employees when they evaluate:

(1) NASA Announcements of Opportunity proposals;

(2) Unsolicited proposals;

(3) NASA Research Announcement proposals; and

(4) SBIR and STTR proposals.

1815.208 Submission, modification, revision, and withdrawal of proposals. (NASA supplements paragraph (b))

(b) The FAR late proposal criteria do not apply to Announcements of Opportunity (see 1872.705–1 paragraph VII), NASA Research Announcements (see 1852.235–72), and Small Business Innovative Research (SBIR) Phase I and Phase II solicitations, and Small Business Technology Transfer (STTR) solicitations. For these solicitations, proposals or proposal modifications received from qualified firms after the latest date specified for receipt may be considered if a significant reduction in cost to the Government is probable or if there are significant technical advantages, as compared with proposals previously received. In such cases, the project office shall investigate the circumstances surrounding the late submission, evaluate its content, and submit written recommendations and findings to the selection official or a designee as to whether there is an advantage to the Government in considering it. The selection official or a designee shall determine whether to consider the late submission.

1815.209 Solicitation provisions and contract clauses. (NASA supplements paragraph (a))

(a) The contracting officer shall insert FAR 52.215–1 in all competitive negotiated solicitations.

1815.209–70 NASA solicitation provisions.

(a) The contracting officer shall insert the provision at 1852.215–77, Preproposal/Pre-bid Conference, in competitive requests for proposals and invitations for bids where the Government intends to conduct a prepoposal or pre-bid conference. Insert the appropriate specific information relating to the conference.

(b) The contracting officer shall insert the clause at 1852.214–71, Grouping for Aggregate Award, in solicitations when it is in the Government's best interest not to make award for less than specified quantities solicited for certain items or groupings of items. Insert the item numbers and/or descriptions applicable for the particular acquisition.

(c) The contracting office shall insert the clause at 1852.214–72, Full Quantities, in solicitations when award will be made only on the full quantities solicited.

(d) The contracting officer shall insert the provision at 1852.215–81, Proposal Page Limitations, in all competitive requests for proposals.

Subpart 1815.3—Source Selection

1815.300 Scope of subpart.

1815.300–70 Applicability of subpart.

(a)(1) Except as indicated in paragraph (b) of this section, NASA competitive negotiated acquisitions shall be conducted as follows:

(i) Acquisitions of $50 million or more—in accordance with FAR 15.3 and this subpart.

(ii) Other acquisitions—in accordance with FAR 15.3 and this subpart except section 1815.370.

(2) Estimated dollar values of acquisitions shall include the values of multiple awards, options, and later phases of the same project.

(b) FAR 15.3 and this subpart are not applicable to acquisitions conducted under the following procedures:

(1) MidRange (see part 1871).

(2) Announcements of Opportunity (see part 1872).

(3) NASA Research Announcements (see 1835.016–70).

(4) The Small Business Innovative Research (SBIR) program and the Small Business Technology Transfer (STTR) pilot program under the authority of the Small Business Act (15 U.S.C. 638).

(5) Architect and Engineering (A&E) services (see FAR 36.6 and 1836.6).

1815.303 Responsibilities. (NASA supplements paragraphs (a) and (b))

(a) The SSA shall be established at the lowest reasonable level for each acquisition. Notwithstanding the FAR designation of the contracting officer as SAA, the SSA for center acquisitions shall be established in accordance with center procedures. For acquisitions designated as Headquarters selections, the SSA will be identified as part of the Master Buy Plan process (see 1807.71).

(b)(i) The source selection authority (SSA) is the Agency official responsible for proper and efficient conduct of the source selection process and for making the final source selection decision. The SSA has the following responsibilities in addition to those listed in the FAR:

(A) Approve the evaluation factors, subfactors, and elements, the weight of the evaluation factors and subfactors, and any special standards of responsibility (see FAR 9.104–2) before release of the RFP, or delegate this authority to appropriate management personnel;

(B) Appoint the source selection team. However, when the Administrator will serve as the SSA, the Official-in-Charge of the cognizant Headquarters Program Office will appoint the team; and

(C) Provide the source selection team with appropriate guidance and special instructions to conduct the evaluation and selection procedures.

(b)(2) Approval authorities for Acquisition Plans and Acquisition Strategy Meetings are in accordance with 1807.103.

1815.304 Evaluation factors and significant subfactors.

1815.304–70 NASA evaluation factors.

(a) Typically, NASA establishes three evaluation factors: Mission Suitability, Cost/Price, and Past Performance. Evaluation factors may be further defined by subfactors. Although discouraged, subfactors may be further defined by elements. Evaluation subfactors and any elements should be structured to identify significant discriminators, or ''key swingers''—the essential information required to support a source selection decision. Too many subfactors and elements undermine effective proposal evaluation. All evaluation subfactors and elements should be clearly defined to avoid overlap and redundancy.

(b) Mission Suitability factor. (1) This factor indicates the merit or excellence of the work to be performed or product to be delivered. It includes, as appropriate, both technical and management subfactors. Mission Suitability shall be numerically weighted and scored on a 1000-point scale.

(2) The Mission Suitability factor may identify evaluation subfactors to further define the content of the factor. Each Mission Suitability subfactor shall be weighted and scored. The adjectival rating percentages in 1815.305(a)(3)(A) shall be applied to the subfactor weight to determine the point score. The number of Mission Suitability subfactors is limited to four. The Mission Suitability evaluation subfactors and their weights shall be identified in the RFP.

(3) Although discouraged, elements that further define the content of each subfactor may be identified. Elements, if used, shall not be numerically weighted and scored. The total number of elements is limited to eight. Any Mission Suitability elements shall be identified in the RFP.

(4) For cost reimbursement acquisitions, the Mission Suitability evaluation shall also include the results of any cost realism analysis. The RFP shall notify offerors that the realism of proposed costs may significantly affect their Mission Suitability scores.

(c) Cost/Price factor. This factor evaluates the reasonableness and, if necessary, the cost realism, of proposed costs/prices. The Cost/Price factor is not numerically weighted or scored.

(d) Past Performance factor. (1) This factor indicates the relevant quantitative and qualitative aspects of each offeror's record of performing services or delivering products similar in size, content, and complexity to the requirements of the instant acquisition.

(2) The RFP shall instruct offerors to submit data (including data from relevant Federal, State, and local governments and private contracts) that can be used to evaluate their past performance. Typically, the RFP will require:

(i) A list of contracts similar in size, content, and complexity to the instant acquisition, showing each contract number, the type of contract, a brief description of the work, and a point of contact from the organization placing the contract. Normally, the requested contracts are limited to those received in the last three years. However, in acquisitions that require longer periods to demonstrate performance quality, such as hardware development, the time period should be tailored accordingly.

(ii) The identification and explanation of any cost overruns or underruns, completion delays, performance problems, and terminations.

(3) The contracting officer may start collecting past performance data before proposal receipt. One method for early evaluation of past performance is to request offerors to submit their past performance information in advance of the proposal due date. The RFP could also include a past performance questionnaire for offerors to send their previous customers with instructions to return the completed questionnaire to the Government. Failure of the offeror to submit its past performance information early or of the customers to submit the completed questionnaires shall not be a cause for rejection of the proposal nor shall it be reflected in the Government's evaluation of the offeror's past performance.

1815.305 Proposal evaluation. (NASA supplements paragraphs (a) and (b))

(a) Each proposal shall be evaluated to identify and document:

(i) Any deficiencies;

(ii) All strengths and weaknesses, classified as significant or insignificant;

(iii) The numerical score and/or adjectival rating of each Mission Suitability subfactors and for the Mission Suitability factor in total;

(iv) Cost realism, if appropriate;

(v) The Past Performance evaluation factor; and

(vi) Any technical, schedule, and cost risk. Risks may result from the offeror's technical approach, manufacturing plan, selection of materials, processes, equipment, etc., or as a result of the cost, schedule, and performance impacts associated with their approaches. Risk evaluations must consider the probability of success, the impact of failure, and the alternatives available to meet the requirements. Risk assessments shall be considered in determining Mission Suitability strengths, weaknesses, deficiencies, and numerical/adjectival ratings. Identified risk areas and the potential for cost impact shall be considered in the cost or price evaluation.

(a)(1) Cost or price evaluation.

(A) Cost or pricing data shall not be requested in competitive acquisitions. See 1815.403–1(b)(1) and 1815.403–3(b).

(B) When contracting on a basis other than firm-fixed-price, the contracting officer shall perform price and cost realism analyses to assess the reasonableness and realism of the proposed costs. A cost realism analysis will determine if the costs in an offeror's proposal are realistic for the work to be performed, reflect a clear understanding of the requirements, and are consistent with the various elements of the offeror's technical proposal. The analysis should include:

(a) The probable cost to the Government of each proposal, including any recommended additions or reductions in materials, equipment, labor hours, direct rates, and indirect rates. The probable cost should reflect the best estimate of the cost of any contract which might result from that offeror's proposal.

(b) The differences in business methods, operating procedures, and practices as they affect cost.

(c) A level of confidence in the probable cost assessment for each proposal.

(C) The cost realism analysis may result in adjustments to Mission Suitability scores in accordance with the procedure described in 1815.305(a)(3)(B).

(a)(2) Past performance evaluation.

(A) The Past Performance evaluation assesses the contractor's performance under previously awarded contracts.

(B) The evaluation may be limited to specific areas of past performance considered most germane for the instant acquisition. It may include any or all of the items listed in FAR 42.1501, and/or any other aspects of past performance considered pertinent to the solicitation requirements or challenges. Regardless of the areas of past performance selected for evaluation, the same areas shall be evaluated for all offerors in that acquisition.

(C) Questionnaires and interviews may be used to solicit assessments of the offerors's performance, as either a prime or subcontractor, from the offeror's previous customers.

(D) All pertinent information, including customer assessments and any offeror rebuttals, will be made part of the source selection records and included in the evaluation.

(a)(3) Technical Evaluation.

(A) Mission Suitability subfactors and the total Mission Suitability factor shall be evaluated using the following adjectival ratings, definitions, and percentile ranges.

Adjectival rating	Definitions	Percentile range
Excellent	A comprehensive and thorough proposal of exceptional merit with one or more significant strengths. No deficiency or significant weakness exists.	91–100
Very Good	A proposal having no deficiency and which demonstrates over-all competence. One or more significant strengths have been found, and strengths outbalance any weaknesses that exist.	71–90
Good	A proposal having no deficiency and which shows a reasonably sound response. There may be strengths or weaknesses, or both. As a whole, weaknesses not off-set by strengths do not significantly detract from the offeror's response.	51–70
Fair	A proposal having no deficiency and which has one or more weaknesses. Weaknesses outbalance any strengths.	31–50

Adjectival rating	Definitions	Percentile range
Poor	A proposal that has one or more deficiencies or significant weaknesses that demonstrate a lack of overall competence or would require a major proposal revision to correct.	0–30

(B) When contracting on a cost reimbursement basis, the Mission Suitability evaluation shall reflect the results of any required cost realism analysis performed under the cost/price factor. A structured approach shall be used to adjust Mission Suitability scores based on the degree of assessed cost realism. An example of such an approach would:

(a) Establish a threshold at which Mission Suitability adjustments would start. The threshold should reflect the acquisition's estimating uncertainty (i.e., the higher the degree of estimating uncertainty, the higher the threshold);

(b) Use a graduated scale that proportionally adjusts a proposal's Mission Suitability score for its assessed cost realism;

(c) Affect a significant number of points to induce realistic pricing;

(d) Calculate a Mission Suitability point adjustment based on the percentage difference between proposed and probable cost as follows:

Services	Hardware development	Point adjustment
±5 percent	±30 percent	0
±6 to 10 percent	±31 to 40 percent	−50
±11 to 15 percent	±41 to 50 percent	−100
±16 to 20 percent	±51 to 60 percent	−150
±21 to 30 percent	±61 to 70 percent	−200
±more than 30 percent	±more than 70 percent	−300

(a)(4) The cost or price evaluation, specifically the cost realism analysis, often requires a technical evaluation of proposed costs. Contracting officers may provide technical evaluators a copy of the cost volume or relevant information from it to use in the analysis.

(b) The contracting officer is authorized to make the determination to reject all proposals received in response to a solicitation.

1815.305–70 Identification of unacceptable proposals.

(a) The contracting officer shall not complete the initial evaluation of any proposal when it is determined that the proposal is unacceptable because:

(1) It does not represent a reasonable initial effort to address the essential requirements of the RFP or clearly demonstrates that the offeror does not understand the requirements;

(2) In research and development acquisitions, a substantial design drawback is evident in the proposal, and sufficient correction or improvement to consider the proposal acceptable would require virtually an entirely new technical proposal; or

(3) It contains major technical or business deficiencies or omissions or out-of-line costs which discussions with the offeror could not reasonably be expected to cure.

(b) The contracting officer shall document the rationale for discontinuing the initial evaluation of a proposal in accordance with this section.

1815.305–71 Evaluation of a single proposal.

(a) If only one proposal is received in response to the solicitation, the contracting officer shall determine if the solicitation was flawed or unduly restrictive and determine if the single proposal is an acceptable proposal. Based on these findings, the SSA shall direct the contracting officer to:

(1) Award without discussions provided for contracting officer determines that adequate price competition exists (see FAR 15.403–1(c)(1)(ii));

(2) Award after negotiating an acceptable contract. (The requirement for submission of cost or pricing data shall be determined in accordance with FAR 15.403–1); or

(3) Reject the proposal and cancel the solicitation.

(b) The procedure in 1815.305–71(a) also applies when the number of proposals equals the number of awards contemplated or when only one acceptable proposal is received.

1815.306 Exchanges with offerors after receipt of proposals. (NASA supplements paragraphs (c), (d), and (e))

(c)(2) A total of no more than three proposals shall be a working goal in establishing the competitive range. Field installations may establish procedures for approval of competitive range determinations commensurate with the complexity or dollar value of an acquisition.

(d)(3)(A) The contracting officer shall advise an offeror if, during discussions, an offeror introduces a new deficiency or significant weakness. The offeror can be advised during the course of the discussions or as part of the request for final proposal revision.

(B) The contracting officer shall identify any cost/price elements that do not appear to be justified and encourage offerors to submit their most favorable and realistic cost/price proposals, but shall not discuss, disclose, or compare cost/price elements of any other offeror. The contracting officer shall question inadequate, conflicting, unrealistic, or unsupported cost information; differences between the offeror's proposal and most probable cost assessments; cost realism concerns; differences between audit findings and proposed costs; proposed rates that are too high/low; and labor mixes that do not appear responsive to the requirements. No agreement on cost/price elements or a ''bottom line'' is necessary.

(C) The contracting officer shall discuss contract terms and conditions so that a ''model'' contract can be sent to each offeror with the request for final proposal revisions. If the solicitation allows, any proposed technical performance capabilities above those specified in the RFP that have value to the Government and are considered proposal strengths should be discussed with the offeror and proposed for inclusion in that offeror's ''model'' contract. These items are not to be discussed with, or proposed to, other offerors. If the offeror declines to include these strengths in its ''model'' contract, the Government evaluators

should reconsider their characterization as strengths.

(e)(1) In no case shall the contacting officer relax or amend RFP requirements for any offeror without amending the RFP and permitting the other offerors an opportunity to propose against the relaxed requirements.

1815.307 Proposal revisions. (NASA supplements paragraph (b))

(b)(i) The request for final proposal revisions (FPRs) shall also:

(A) Identify any remaining deficiencies and significant weaknesses;

(B) Instruct offerors to incorporate all changes to their offers resulting from discussions, and require clear traceability from initial proposals;

(C) Require offerors to complete and execute the ''model'' contract, which includes any special provisions or performance capabilities the offeror proposed above those specified in the RFP;

(D) Caution offerors against unsubstantiated changes to their proposals; and

(E) Establish a page limit for FPRs.

(ii) Approval of the Associate Administrator for Procurement (Code HS) is required to reopen discussions for acquisitions of $50 million or more. Approval of the procurement officer is required for all other acquisitions.

(iii) Proposals are rescored based on FPR evaluations. Scoring changes between initial and FPRs shall be clearly traceable.

1815.308 Source selection decision. (NASA paragraphs (1), (2) and (3))

(1) All significant evaluation findings shall be fully documented and considered in the source selection decision. A clear and logical audit trail shall be maintained for the rationale for ratings and scores, including a detailed account of the decisions leading to the selection. Selection is made on the basis of the evaluation criteria established in the RFP.

(2) Before aware, the SSA shall sign a source selection statement that clearly and succinctly justifies the selection. Source selection statements must describe: the acquisition; the evaluation procedures; the substance of the Mission Suitability evaluation; and the evaluation of the Cost/Price and Past Performance factors. The statement also addresses unacceptable proposals, the competitive range determination, late proposals, or any other considerations pertinent to the decision. The statement shall not reveal any confidential business information. Except for certain major system acquisition competitions (see 1815.506–70), source selection statements shall be releasable to competing offerors and the general public upon request. The statement shall be available to the Debriefing Official to use in postaward debriefings of unsuccessful offerors and shall be provided to debriefed offerors upon request.

(3) Once the selection decision is made, the contracting officer shall award the contract.

1815.370 NASA source evaluation boards.

(a) The source evaluation board (SEB) procedures shall be used for those acquisitions identified in 1815.300–700(a)(1)(i).

(b) *General.* The SEB assists the SSA by providing expert analyses of the offerors' proposals in relation to the evaluation factors, subfactors, and elements contained in the solicitation. The SEB will prepare and present its findings to the SSA, avoiding trade-off judgments among either the individual offerors or among the evaluation factors. The SEB will not make recommendations for selection to the SSA.

(c) *Designation.* (1) The SEB shall be comprised of competent individuals fully qualified to identify the strengths, weaknesses, and risks associated with proposals submitted in response to the solicitation. The SEB shall be appointed as early as possible in the acquisition process, but not later than acquisition plan or acquisition strategy meeting approval.

(2) While SEB participants are normally drawn from the cognizant installation, personnel from other NASA installations or other Government agencies may participate. When it is necessary to disclose the proposal (in whole or in part) outside the Government, approval shall be obtained in accordance with 1815.207–70.

(3) When Headquarters retains SSA authority, the Headquarters Office of Procurement (Code HS) must concur on the SEB appointments. Qualifications of voting members, including functional title, grade level, and related SEB experience, shall be provided.

(d) *Organization.* (1) The organization of an SEB is tailored to the requirements of the particular acquisition. This can range from the simplest situation, where the SEB conducts the evaluation and factfinding without the use of committees or panels/consultants (as described in paragraphs (d)(4) and (5) of this section) to a highly complex situation involving a major acquisition where two or more committees are formed and these, in turn, are assisted by special panels or consultants in particular areas. The number of committees or panels/consultants shall be kept to a minimum.

(2) The SEB Chairperson is the principal operating executive of the SEB. The Chairperson is expected to manage the team efficiently without compromising the validity of the findings provided to the SSA as the basis for a sound selection decision.

(3) The SEB Recorder functions as the principal administrative assistant to the SEB Chairperson and is principally responsible for logistical support and recordkeeping of SEB activities.

(4) An SEB committee functions as a factfinding arm of the SEB, usually in a broad grouping of related disciplines (e.g., technical or management). The committee evaluates in detail each proposal, or portion thereof, assigned by the SEB in accordance with the approved evaluation factors, subfactors, and elements, and summarizes its evaluation in a written report to the SEB. The committee will also respond to requirements assigned by the SEB, including further justification or reconsideration of its findings. Committee chairpersons shall manage the administrative and procedural matters of their committees.

(5) An SEB panel or consultant functions as a factfinding arm of the committee in a specialized area of the committee's responsibilities. Panels are established or consultants named when a particular area requires deeper analysis than the committee can provide.

(6) The total of all such evaluators (committees, panels, consultants, etc. excluding SEB voting members and ex officio members) shall be limited to a maximum of 20, unless approved in writing by the procurement officer.

(e) *Voting members.* (1) Voting members of the SEB shall include people who will have key assignments on the project to which the acquisition is directed. However, it is important that this should be tempered to ensure objectivity and to avoid an improper balance. It may even be appropriate to designate a management official from outside the project as SEB Chairperson.

(2) Non-government personnel shall not serve as voting members of an SEB.

(3) The SEB shall review the findings of committees, panels, or consultants and use its own collective judgment to develop the SEB evaluation findings reported to the SSA. All voting members of the SEB shall have equal status as rating officials.

(4) SEB membership shall be limited to a maximum of 7 voting individuals. Wherever feasible, an assignment to SEB membership as a voting member shall be on a full-time basis. When not

feasible, SEB membership shall take precedence over other duties.

(5) The following people shall be voting members of all SEBs:

(i) Chairperson.

(ii) A senior, key technical representative for the project.

(iii) An experienced procurement representative.

(iv) A senior Safety & Mission Assurance (S&MA) representative, as appropriate.

(v) Committee chairpersons (except where this imposes an undue workload).

(f) *Ex officio members.* (1) The number of nonvoting ex officio (advisory) members shall be kept as small as possible. Ex officio members should be selected for the experience and expertise they can provide to the SEB. Since their advisory role may require access to highly sensitive SEB material and findings, ex officio membership for persons other than those identified in paragraph (f)(3) of this section is discouraged.

(2) Nonvoting ex officio members may state their views and contribute to the discussions in SEB deliberations, but they may not participate in the actual rating process. However, the SEB recorder should be present during rating sessions.

(3) For field installation selections, the following shall be nonvoting ex officio members on all SEBs:

(i) Chairpersons of SEB committees, unless designated as voting members.

(ii) The procurement officer of the installation, unless designated a voting member.

(iii) The contracting officer responsible for the acquisition, unless designated a voting member.

(iv) The Chief Counsel and/or designee of the installation.

(v) The installation small business specialist.

(vi) The SEB recorder.

(g) *Evaluation.* (1) If committees are used, the SEB Chairperson shall send them the proposals or portions thereof to be evaluated, along with instructions regarding the expected function of each committee, and all data considered necessary or helpful.

(2) While oral reports may be given to the SEB, each committee shall submit a written report which should include the following:

(i) Copies of individual worksheets and supporting comments to the lowest level evaluated;

(ii) An evaluation sheet summarized for the committee as a whole; and

(iii) A statement for each proposal describing any strengths, deficiencies, or significant weaknesses which significantly affected the evaluation and stating any reservations or concerns, together with supporting rationale, which the committee or any of its members want to bring to the attention of the SEB.

(3) Clear traceability must exist at all levels of the SEB process. All reports submitted by committees or panels will be retained as part of the SEB records.

(4) Each voting SEB member shall thoroughly review each proposal and any committee reports and findings. The SEB shall rate or score the proposals for each evaluation factor and subfactor according to its own collective judgment. SEB minutes shall reflect this evaluation process.

(h) *SEB presentation.* (1) The SEB Chairperson shall brief the SSA on the results of the SEB deliberations to permit an informed and objective selection of the best source(s) for the particular acquisition.

(2) The presentation shall focus on the significant strengths, deficiencies, and significant weaknesses found in the proposals, the probable cost of each proposal, and any significant issues and problems identified by the SEB. This presentation must explain any applicable special standards of responsibility; evaluation factors, subfactors, and elements; the significant strengths and significant weaknesses of the offerors; the Government cost estimate, if applicable; the offerors' proposed cost/price; the probable cost; the proposed fee arrangements; and the final adjectival ratings and scores to the subfactor level.

(3) Attendance at the presentation is restricted to people involved in the selection process or who have a valid need to know. The designated individuals attending the SEB presentation(s) shall:

(i) Ensure that the solicitation and evaluation processes complied with all applicable agency policies and that the presentation accurately conveys the SEB's activities and findings;

(ii) Not change the established evaluation factors, subfactors, elements, weights, or scoring systems; or the substance of the SEB's findings. They may, however, advise the SEB to rectify procedural omissions, irregularities or inconsistencies, substantiate its findings, or revise the presentation.

(4) The SEB recorder will coordinate the formal presentation including arranging the time and place of the presentation, assuring proper attendance, and distributing presentation material.

(5) For Headquarters selections, the Headquarters Office of Procurement (Code HS) will coordinate the presentation, including approval of attendees. When the Administrator is the SSA, a preliminary presentation should be made to the center director and to the Official-in-Charge of the cognizant Headquarters Program Office.

(i) *Recommended SEB presentation format.* (1) *Identification of the acquisition.* Identifies the installation, the nature of the services or hardware to be acquired, some quantitative measure including the Government cost estimate for the acquisition, and the planned contractual arrangement. Avoids detailed objectives of the acquisition.

(2) *Background.* Identifies any earlier phases of a phased acquisition or, as in the case of continuing support services, identifies the incumbent and any consolidations or proposed changes from the existing structure.

(3) *Evaluation factors, subfactors, and elements.* Explains the evaluation factors, subfactors, and elements, and any special standards of responsibility. Lists the relative order of importance of the evaluation factors and the numerical weights of the Mission Suitability subfactors. Presents the adjectival scoring system used in the Mission Suitability and Past Performance evaluations.

(4) *Sources.* Indicates the number of offerors solicited and the number of offerors expressing interest (e.g., attendance at a preproposal conference). Identifies the offerors submitting proposals, indicating any small businesses, small disadvantaged businesses, and women-owned businesses.

(5) *Summary of findings.* Lists the initial and final Mission Suitability ratings and scores, the offerors' proposed cost/prices, and any assessment of the probable costs. Introduces any clear discriminator, problem, or issue which could affect the selection. Addresses any competitive range determination.

(6) *Significant strengths, deficiencies, and significant weaknesses of offerors.* Summarizes the SEB's findings, using the following guidelines:

(i) Present only the significant strengths, deficiencies, and significant weaknesses of individual offerors.

(ii) Directly relate the significant strengths, deficiencies, and significant weaknesses to the evaluation factors, subfactors, and elements.

(iii) Indicate the results and impact, if any, of discussions and FPRs on ratings and scores.

(7) *Final mission suitability ratings and scores.* Summarizes the evaluation subfactors and elements, the maximum points achievable, and the scores of the offerors in the competitive range.

(8) *Final cost/price evaluation.* Summarizes proposed cost/prices and any probable costs associated with each offeror including proposed fee arrangements. Presents the data as accurately as possible, showing SEB adjustments to achieve comparability. Identifies the SEB's confidence in the probable costs of the individual offerors, noting the reasons for low or high confidence.

(9) *Past performance.* Reflects the summary conclusions, supported by specific case data.

(10) *Special interest.* Includes only information of special interest to the SSA that has not been discussed elsewhere, e.g., procedural errors or other matters that could affect the selection decision.

(j) A source selection statement shall be prepared in accordance with 1815.308. For installation selections, the installation Chief Counsel or designee will prepare the source selection statement. For Headquarters selections, the Office of General Counsel or designee will prepare the statement.

Subpart 1815.4—Contract Pricing

1815.403 Obtaining cost or pricing data.

1815.403–1 Prohibition on obtaining cost or pricing data. (NASA supplements paragraphs (b) and (c))

(b)(1) The adequate price competition exception is applicable to both fixed-price and cost-reimbursement type acquisitions. Contracting officers shall assume that all competitive acquisitions qualify for this exception.

(c)(4) Waivers of the requirement for submission of cost or pricing data shall be prepared in accordance with FAR 1.704. A copy of each waiver shall be sent to the Headquarters Office of Procurement (Code HK).

1815.403–170 Acquisitions with the Canadian Commercial Corporation (CCC).

NASA has waived the requirement for the submission of cost or pricing data when contracting with the CCC. This waiver applies through March 31, 1999. The CCC will provide assurance of the fairness and reasonableness of the proposed prices, and will also provide for follow-up audit activity to ensure that excess profits are found and refunded to NASA. However, contracting officers shall ensure that the appropriate level of information other than cost or pricing data is submitted to permit any required Government cost/price analysis.

1815.403–3 Requiring information other than cost or pricing data. (NASA supplements paragraph (b))

(b) As indicated in 1815.403–1(b)(1), the adequate price competition exception applies to all competitive acquisitions. For other than firm-fixed-price competitions, only the minimum information other than cost or pricing data necessary to ensure price reasonableness and assess cost realism should be requested. For firm-fixed-price acquisitions, the contracting officer shall not request any cost information, unless proposed prices appear unreasonable or unrealistically low given the offeror's proposed approach and there are concerns that the contractor may default.

1815.403–4 Requiring cost or pricing data. (NASA supplements paragraph (b))

(b)(2) If a certificate of current cost or pricing data is made applicable as of a date other than the date of price agreement, the agreed date should generally be within two weeks of the date of that agreement.

1815.404 Proposal analysis.

1815.404–2 Information to support proposal analysis. (NASA supplements paragraph (a))

(a)(1)(A) A field pricing report consists of a technical report and an audit report by the cognizant contract audit activity. Contracting officers should request a technical report from the ACO only if NASA resources are not available.

(B) When the required participation of the ACO or auditor involves merely a verification of information, contracting officers should obtain this verification from the cognizant office by telephone rather than formal request of field pricing support.

(C) When the cost proposal is for a product of a follow-on nature, contracting officers shall ensure that the following items, at a minimum are considered: actuals incurred under the previous contract, learning experience, technical and production analysis, and subcontract proposal analysis. This information may be obtained through NASA resources or the cognizant DCMC ACO or DCAA.

(D) Requests for field pricing assistance may be made on NASA Form 1434, Letter of Request for Pricing-Audit-Technical Evaluation Services.

1815.404–4 Profit. (NASA supplements paragraph (b))

(b)(1)(i) The NASA structured approach for determining profit or fee objectives, described in 1815.404–470, shall be used to determine profit or fee objectives for conducting negotiations in those acquisitions that require cost analysis.

(ii) The use of the NASA structured approach for profit or fee is not required for:

(a) Architect-engineer contracts;

(b) Management contracts for operation and/or maintenance of Government facilities;

(c) Construction contracts;

(d) Contracts primarily requiring delivery of material supplied by subcontractors;

(e) Termination settlements;

(f) Cost-plus-award-fee contracts (however, contracting officers may find it advantageous to perform a structured profit/fee analysis as an aid in arriving at an appropriate fee arrangement); and

(g) Contracts having unusual pricing situations when the procurement officer determines in writing that the structured approach is unsuitable.

1815.404–470 NASA structured approach for profit or fee objective.

(a) General. (1) The NASA structured approach for determining profit or fee objectives is a system of assigning weights to cost elements and other factors to calculate the objective. Contracting officers shall use NASA Form 634 to develop the profit or fee objective and shall use the weight ranges listed after each category and factor on the form after considering the factors in this subsection. The rationale supporting the assigned weights shall be documented in the PPM in accordance with 1815.406–170(d)(3).

(2)(i) The structured approach was designed for determining profit or fee objectives for commercial organizations. However, the structured approach shall be used as a basis for arriving at fee objectives for nonprofit organizations (FAR subpart 31.7), excluding educational institutions (FAR subpart 31.3), in accordance with paragraph (a)(2)(ii) of this section. (It is NASA policy not to pay profit or fee on contracts with educational institutions.)

(ii) For contracts with nonprofit organizations under which profits or fees are involved, an adjustment of up to 3 percent shall be subtracted from the total profit/fee objective. In developing this adjustment, it will be necessary to consider the following factors:

(A) Tax position benefits;

(B) Granting of financing through letters of credit;

(C) Facility requirements of the nonprofit organization; and

(D) Other pertinent factors that may work to either the advantage or disadvantage of the contractor in its position as a nonprofit organization.

(b) Contractor effort. (1) This factor takes into account what resources are necessary and what the contractor must do to meet the contract performance requirements. The suggested cost categories under this factor are for reference purposes only. The format of individual proposals will vary, but these broad categories provide a sample structure for the evaluation of all categories of cost. Elements of cost shall be separately listed under the appropriate category and assigned a weight from the category range.

(2) Regardless of the categories of cost defined for a specific acquisition, neither the cost of facilities nor the amount calculated for the cost of money for facilities capital shall be included as part of the cost base in column 1.(a) in the computation of profit or fee.

(3) Evaluation of this factor requires analyzing the cost content of the proposed contract as follows:

(i) Material acquisition (subcontracted items, purchased parts, and other material).

(A) Consider the managerial and technical efforts necessary for the prime contractor to select subcontractors and administer subcontracts, including efforts to introduce and maintain competition. These evaluations shall be performed for purchases of raw materials or basic commodities; purchases of processed material, including all types of components of standard or near-standard characteristics; and purchases of pieces, assemblies, subassemblies, special tooling, and other products special to the end item. In performing the evaluation, also consider whether the contractor's purchasing program makes a substantial contribution to the performance of a contract through the use of subcontracting programs involving many sources, new complex components and instrumentation, incomplete specifications, and close surveillance by the prime contractor.

(B) Recognized costs proposed as direct material costs, such as scrap charges, shall be treated as material for profit/fee evaluation. If intracompany transfers are accepted at price in accordance with FAR 31.205–26(e), they shall be evaluated as a single element under the material acquisition category. For other intracompany transfers, the constituent elements of cost shall be identified and weighted under the appropriate cost category, i.e., material, labor, and overhead.

(ii) Direct labor (engineering, service, manufacturing, and other labor). (A) Analysis of the various items of cost should include evaluation of the comparative quality and level of the engineering talents, service contract labor, manufacturing skills, and experience to be employed. In evaluating engineering labor for the purpose of assigning profit/fee weights, consideration should be given to the amount of notable scientific talent or unusual or scarce engineering talent needed, in contrast to journeyman engineering effort or supporting personnel.

(B) Evaluate service contract labor in a like manner by assigning higher weights to engineering, professional, or highly technical skills and lower weights to semiprofessional or other skills required for contract performance.

(C) Similarly, the variety of engineering, manufacturing and other types of labor skills required and the contractor's manpower resources for meeting these requirements should be considered. For purposes of evaluation, subtypes of labor (for example, quality control, and receiving and inspection) proposed separately from engineering, service, or manufacturing labor should be included in the most appropriate labor type. However, the same evaluation considerations as outlined in this section will be applied.

(iii) Overhead and general management (G&A). (A) Analysis of overhead and G&A includes the evaluation of the makeup of these expenses, how much they contribute to contract performance, and the degree of substantiation provided for rates proposed in future years.

(B) Contracting officers should also consider the historical accuracy of the contractor's proposed overheads as well as the ability to control overhead pool expenses.

(C) The contracting officer, in an evaluation of the overhead rate of a contractor using a single indirect cost rate, should break out the applicable sections of the composite rate which could be classified as engineering overhead, manufacturing overhead, other overhead pools, and G&A expenses, and apply the appropriate weight.

(iv) Other costs. Include all other direct costs associated with contractor performance under this item, for example, travel and relocation, direct support, and consultants. Analysis of these items of cost should include their nature and how much they contribute to contract performance.

(c) Other factors.

(1) Cost risk. The degree of risk assumed by the contractor should influence the amount of profit or fee a contractor is entitled to anticipate. For example, if a portion of the risk has been shifted to the Government through cost-reimbursement or price redetermination provisions, unusual contingency provisions, or other risk reducing measures, the amount of profit or fee should be less than for arrangements under which the contractor assumes all the risk. This factor is one of the most important in arriving at prenegotiation profit/fee objectives.

(i) Other risks on the part of the contractor, such as loss of reputation, losing a commercial market, or losing potential profit/fee in other fields, shall not be considered in this factor. Similarly, any risk on the part of the contracting office, such as the risk of not acquiring an effective space vehicle, is not within the scope of this factor.

(ii) The degree of cost responsibility assumed by the contractor is related to the share of total contract cost risk assumed by the contractor through the selection of contract type. The weight for risk by contract type would usually fall within the 0 to 3 percent range for cost-reimbursement contracts and 3 to 7 percent range for fixed-price contracts.

(A) Within the ranges set forth in paragraph (c)(1)(ii) of this subsection, a cost-plus-fixed-fee contract normally would not justify a reward for risk in excess of 0 percent, unless the contract contains cost risk features such as ceilings on overheads, etc. In such cases, up to 0.5 percent may be justified. Cost-plus-incentive-fee contracts fill the remaining portion of the range, with weightings directly related to such factors as confidence in target cost, share ratio of fees, etc.

(B) The range for fixed-price type contracts is wide enough to accommodate the various types of fixed-price arrangements. Weighting should be indicative of the price risk assumed and the end item required, with only firm-fixed-price contracts with requirements for prototypes or hardware reaching the top end of the range.

(iii) The cost risk arising from contract type is not the only form of cost risk to consider.

(A) The Contractor's subcontracting program may have a significant impact on the contractor's acceptance of risk under a particular contract type. This consideration should be a part of the contracting officer's overall evaluation in selecting a weight to apply for cost risk. It may be determined, for instance, that the prime contractor has effectively transferred real cost risk to a subcontractor, and the contract cost risk weight may, as a result, be below the range that would otherwise apply for the contract type proposed. The contract cost risk weight should not be lowered, however, merely on the basis that a

substantial portion of the contract costs represents subcontracts unless those subcontract costs represent a substantial transfer of the contractor's risk.

(B) In making a contract cost risk evaluation in an acquisition that involves definitization of a letter contract, unpriced change orders, or unpriced orders under BOAs, consideration should be given to the effect on total contract cost risk as a result of having partial performance before definitization. Under some circumstances it may be reasoned that the total amount of cost risk has been effectively reduced. Under other circumstances it may be apparent that the contractor's cost risk is substantially unchanged. To be equitable, determination of a profit/fee weight for application to the total of all recognized costs, both incurred and yet to be expended, must be made with consideration of all attendant circumstances and should not be based solely on the portion of costs incurred, or percentage of work completed, before definitization.

(2) Investment. NASA encourages its contractors to perform their contracts with a minimum of financial, facilities, or other assistance from the Government. As such, it is the purpose of this factor to encourage the contractor to acquire and use its own resources to the maximum extent possible. Evaluation of this factor should include an analysis of the contractor's facilities and the frequency of payments.

(i) To evaluate how facilities contribute to the profit/fee objective requires knowledge of the level of facilities utilization needed for contract performance, the source and financing of the required facilities, and the overall cost effectiveness of the facilities offered. Contractors furnishing their own facilities that significantly contribute to lower total contract costs should be provided additional profit/fee. On the other hand, contractors that rely on the Government to provide or finance needed facilities should receive a correspondingly lower profit/fee. Cases between the examples in this paragraph should be evaluated on their merits, with either a positive or negative adjustment, as appropriate, in the profit/fee objective. However, where a highly facilitized contractor is to perform a contract that does not benefit from this facilitization, or when a contractor's use of its facilities has a minimum cost impact on the contract, profit/fee need not be adjusted.

(ii) In analyzing payments, consider the frequency of payments by the Government to the contractor and unusual payments. The key to this weighting is proper consideration of the impact the contract will have on the contractor's cash flow. Generally, negative consideration should be given for payments more frequent than monthly, with maximum reduction being given as the contractor's working capital approaches zero. Positive consideration should be given for payments less frequent than monthly.

(3) Performance. The contractor's past and present performance should be evaluated in such areas as product quality, meeting performance schedules, efficiency in cost control (including the need for and reasonableness of costs incurred), accuracy and reliability of previous cost estimates, degree of cooperation by the contractor (both business and technical), timely processing of changes and compliance with other contractual provisions.

(4) Subcontract program management. Subcontract program management includes evaluation of the contractor's commitment to its competition program and its past and present performance in competition in subcontracting. If a contractor has consistently achieved excellent results in these areas in comparison with other contractors in similar circumstances, such performance merits a proportionately greater opportunity for profit or fee. Conversely, a poor record in this regard should result in a lower profit or fee.

(5) Federal socioeconomic programs. In addition to rewarding contractors for unusual initiative in supporting Government socioeconomic programs, failure or unwillingness on the part of the contractor to support these programs should be viewed as evidence of poor performance for the purpose of establishing this profit/fee objective factor.

(6) Special situations. (i) Occasionally, unusual contract pricing arrangements are made with the contractor under which it agrees to accept a lower profit or fee for changes or modifications within a prescribed dollar value. In such circumstances, the contractor should receive favorable consideration in developing the profit/fee objective.

(ii) This factor need not be limited to situations that increase profit/fee levels. A negative consideration may be appropriate when the contractor is expected to obtain spin-off benefits as a direct result of the contract, for example, products with commercial application.

(d) Facilities capital cost of money. (1) When facilities capital cost of money is included as an item of cost in the contractor's proposal, it shall not be included in the cost base for calculating profit/fee. In addition, a reduction in the profit/fee objective shall be made in the amount equal to the facilities capital cost of money allowed in accordance with FAR 31.205–10(a)(2).

(2) CAS 417, cost of money as an element of the cost of capital assets under construction, should not appear in contract proposals. These costs are included in the initial value of a facility for purposes of calculating depreciation under CAS 414.

1815.404–471 Payment of profit or fee under letter contracts.

NASA's policy is to pay profit or fee only on definitized contracts.

1815.406 Documentation.

1815.406–1 Prenegotiation objectives. (NASA supplements paragraph (b))

(b)(i) Before conducting negotiations requiring installation or Headquarters review, contracting officers or their representatives shall prepare a prenegotiation position memorandum setting forth the technical, business, contractual, pricing, and other aspects to be negotiated.

(ii) A prenegotiation position memorandum is not required for contracts awarded under the competitive negotiated procedures of FAR 15.3 and 1815.3.

1815.406–170 Content of the prenegotiation position memorandum.

The prenegotiation position memorandum (PPM) should fully explain the contractor and Government positions. Since the PPM will ultimately become the basis for negotiation, it should be structured to track to the price negotiation memorandum (see FAR 15.406–3 and 1815.406–3). In addition to the information described in FAR 15.406–1 and, as appropriate, 15.406–3(a), the PPM should address the following subjects, as applicable, in the order presented:

(a) Introduction. Include a description of the acquisition and a history of prior acquisitions for the same or similar items. Address the extent of competition and its results. Identify the contractor and place of performance (if not evident from the description of the acquisition). Document compliance with law, regulations and policy, including JOFOC, synopsis, EEO compliance, and current status of contractor systems (see FAR 15.406–3(a)(4)). In addition, the negotiation schedule should be addressed and the Government negotiation team members identified by name and position.

(b) Type of contract contemplated. Explain the type of contract

contemplated and the reasons for its suitability.

(c) Special features and requirements. In this area, discuss any special features (and related cost impact) of the acquisition, including such items as—

(1) Letter contract or precontract costs authorized and incurred;

(2) Results of preaward survey;

(3) Contract option requirements;

(4) Government property to be furnished;

(5) Contractor/Government investment in facilities and equipment (and any modernization to be provided by the contractor/Government); and

(6) Any deviations, special clauses, or unusual conditions anticipated, for example, unusual financing, warranties, EPA clauses and when approvals were obtained, if required.

(d) Cost analysis. For the basic requirement, and any option, include—

(1) A parallel tabulation, by element of cost and profit/fee, of the contractor's proposal and the Government's negotiation objective. The negotiation objective represents the fair and reasonable price the Government is willing to pay for the supplies/services. For each element of cost, compare the contractor's proposal and the Government position, explain the differences and how the Government position was developed, including the estimating assumptions and projection techniques employed, and how the positions differ in approach. Include a discussion of excessive wages found (if applicable) and their planned resolution. Explain how historical costs, including costs incurred under a letter contract (if applicable), were used in developing the negotiation objective.

(2) Significant differences between the field pricing report (including any audit reports) and the negotiation objectives and/or contractor's proposal shall be highlighted and explained. For each proposed subcontract meeting the requirement of FAR 15.404–3(c), there shall be a discussion of the price and, when appropriate, cost analyses performed by the contracting officer, including the negotiation objective for each such subcontract. The discussion of each major subcontract shall include the type of subcontract, the degree of competition achieved by the prime contractor, the price and, when appropriate, cost analyses performed on the subcontractor's proposal by the prime contractor, any unusual or special pricing or finance arrangements, and the current status of subcontract negotiations.

(3) The rationale for the Government's profit/fee objectives and, if appropriate, a completed copy of the NASA Form 634, Structured Approach—Profit/Fee Objective, and DD Form 1861, Contract Facilities Capital Cost of Money, should be included. For incentive and award fee contracts, describe the planned arrangement in terms of share lines, ceilings, and cost risk.

(e) Negotiation approval sought. The PPM represents the Government's realistic assessment of the fair and reasonable price for the supplies and services to be acquired. If negotiations subsequently demonstrate that a higher dollar amount (or significant term or condition) is reasonable, the contracting officer shall document the rationale for such a change and request approval to amend the PPM from the original approval authority.

1815.406–171 Installation reviews.

Each contracting activity shall establish procedures to review all prenegotiation position memoranda. The scope of coverage, exact procedures to be followed, levels of management review, and contract file documentation requirements should be directly related to the dollar value and complexity of the acquisition. The primary purpose of these reviews is to ensure that the negotiator, or negotiation team, is thoroughly prepared to enter into negotiations with a well-conceived, realistic, and fair plan.

1815.406–172 Headquarters reviews.

(a) When a prenegotiation position has been selected for Headquarters review and approval, the contracting activity shall submit to the Office of Procurement (Code HS) one copy each of the prenegotiation position memorandum, the contractor's proposal, the Government technical evaluations, and all pricing reports (including any audit reports).

(b) The required information described in paragraph (a) of this section shall be furnished to Headquarters as soon as practicable and sufficiently in advance of the planned commencement of negotiations to allow a reasonable period of time for Headquarters review. Electronic submittal is acceptable.

1815.406–3 Documenting the negotiation. (NASA supplements paragraph (a))

(a)(i) The price negotiation memorandum (PNM) serves as a detailed summary of: the technical, business, contractual, pricing (including price reasonableness), and other elements of the contract negotiated; and the methodology and rationale used in arriving at the final negotiated agreement.

(ii) A PNM is not required for a contract awarded under competitive negotiated procedures. However, the information required by FAR 15.406–3 shall be reflected in the evaluation and selection documentation to the extent applicable.

(iii) When the PNM is a ''stand-alone'' document, it shall contain the information required by the FAR and NFS for both PPMs and PNMs. However, when a PPM has been prepared under 1815.406–1, the subsequent PNM need only provide any information required by FAR 15.406–3 that was not provided in the PPM, as well as any changes in the status of factors affecting cost elements (e.g., use of different rates, hours, or subcontractors; wage rate determinations; or the current status of the contractor's systems).

1815.407 Special cost or pricing areas.

1815.407–2 Make-or-buy programs. (NASA supplements paragraph (e))

(e)(1) Make-or-buy programs should not include items or work efforts estimated to cost less than $500,000.

1815.408 Solicitation provisions and contract clauses.

1815.408–70 NASA solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 1852.215–78, Make-or-Buy Program Requirements, in solicitations requiring make-or-buy programs as provided in FAR 15.407–2(c). This provision shall be used in conjunction with the clause at FAR 52.215–9, Changes or Additions to Make-or-Buy Program. The contracting officer may add additional paragraphs identifying any other information required in order to evaluate the program.

(b) The contracting officer shall insert the clause at 1852.215–79, Price Adjustment for ''Make-or-Buy'' Changes, in contracts that include FAR 52.215–9 with its Alternate I or II. Insert in the appropriate columns the items that will be subject to a reduction in the contract value.

Subpart 1815.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

1815.504 Award to successful offeror.

The reference to notice of award in FAR 15.504 on negotiated acquisitions is a generic one. It relates only to the formal establishment of a contractual document obligating both the Government and the offeror. The notice is effected by the transmittal of a fully approved and executed definitive contract document, such as the award portion of SF 33, SF 26, SF 1449, or SF

1447, or a letter contract when a definitized contract instrument is not available but the urgency of the requirement necessitates immediate performance. In this latter instance, the procedures in 1816.603 for approval and issuance of letter contracts shall be followed.

1815.506 Postaward debriefing of offerors.

1815.506–70 Debriefing of offerors—Major System acquisitions.

(a) When an acquisition is conducted in accordance with the Major System acquisition procedures in part 1834 and multiple offerors are selected, the debriefing will be limited in such a manner that it does not prematurely disclose innovative concepts, designs, and approaches of the successful offerors that would result in a transfusion of ideas.

(b) When Phase B awards are made for alternative system design concepts, the source selection statements shall not be released to competing offerors or the general public until the release of the source selection statement for Phase C/D without the approval of the Associate Administrator for Procurement (Code HS).

Subpart 1815.6—Unsolicited Proposals

1815.602 Policy. (NASA paragraphs (1) and (2))

(1) An unsolicited proposal may result in the award of a contract, grant, cooperative agreement, or other agreement. If a grant or cooperative agreement is used, the NASA Grant and Cooperative Agreement Handbook (NPG 5800.1) applies.

(2) Renewal proposals (i.e., those for the extension or augmentation of current contracts) are subject to the same FAR and NFS regulations, including the requirements of the Competition in Contracting Act, as are proposals for new contracts.

1815.604 Agency points of contact. (NASA supplements paragraph (a))

(a) Information titled ''Guidance for the Preparation and Submission of Unsolicited Proposals'' is available on the Internet at http://procure.msfc.nasa.gov/nashdbk.html. A deviation is required for use of any modified or summarized version of the Internet information or for alternate means of general dissemination of unsolicited proposal information.

1815.606 Agency procedures. (NASA supplements paragraphs (a) and (b))

(a) NASA will not accept for formal evaluation unsolicited proposals initially submitted to another agency or to the Jet Propulsion Laboratory (JPL) without the offeror's express consent.

(b)(i) NASA Headquarters and each NASA field installation shall designate a point of contact for receiving and coordinating the handling and evaluation of unsolicited proposals.

(ii) Each installation shall establish procedures for handling proposals initially received by other offices within the installation. Misdirected proposals shall be forwarded by the point of contact to the proper installation. Points of contact are also responsible for providing guidance to potential offerors regarding the appropriate NASA officials to contact for general mission-related inquiries or other preproposal discussions.

(iii) Points of contact shall keep records of unsolicited proposals received and shall provide prompt status information to requesters. These records shall include, at a minimum, the number of unsolicited proposals received, funded, and rejected during the fiscal year; the identity of the offerors; and the office to which each was referred. The numbers shall be broken out by source (large business, small business, university, or nonprofit institution).

1815.606–70 Relationship of unsolicited proposals to NRAs.

An unsolicited proposal for a new effort or a renewal, identified by an evaluating office as being within the scope of an open NRA, shall be evaluated as a response to that NRA (see 1835.016–70), provided that the evaluating office can either:

(a) State that the proposal is not at a competitive disadvantage, or

(b) Give the offeror an opportunity to amend the unsolicited proposal to ensure compliance with the applicable NRA proposal preparation instructions. If these conditions cannot be met, the proposal must be evaluated separately.

1815.609 Limited use of data.

1815.609–70 Limited use of proposals.

Unsolicited proposals shall be evaluated outside the Government only to the extent authorized by, and in accordance with, the procedures prescribed in, 1815.207–70.

1815.670 Foreign proposals.

Unsolicited proposals from foreign sources are subject to NMI 1362.1, Initiation and Development of International Cooperation in Space and Aeronautical Programs.

Subpart 1815.70—Ombudsman

1815.7001 NASA Ombudsman Program.

NASA's implementation of an ombudsman program is in NPG 5101.33, Procurement Guidance.

1815.7002 Synopses of solicitations and contracts.

In all synopses announcing competitive acquisitions, the contracting officer shall indicate that the clause at 1852.215–84, Ombudsman, is applicable. This may be accomplished by referencing the clause number and identifying the installation Ombudsman.

1815.7003 Contract clause.

The contracting officer shall insert a clause substantially the same as the one at 1852.215–84, Ombudsman, in all solicitations (including draft solicitations) and contracts.

PART 1816—TYPES OF CONTRACTS

8. In section 1816.402–270, paragraph (e)(1) is revised to read as follows:

1816.402–270 NASA technical performance incentives.

* * * * *

(e) * * *

(1) For a CPFF contract, the sum of the maximum positive performance incentive and fixed fee shall not exceed the limitations in FAR 15.404–4(c)(4)(i).

* * * * *

PART 1834—MAJOR SYSTEM ACQUISITION

1834.7003–1 [Amended]

9. In section 1834.7003–1, paragraph (c) is amended by adding ''and 1804.570–2,'' after the reference ''FAR 5.205,''.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Part 1852 is amended as set forth below:

1852.215–73, 1852.215–74, 1852.215–75 [Removed]

11. Sections 1852.215–73, 1852.215–74 and 1852.215–75 are removed.

1852.215–77 [Amended]

12. In section 1852.215–77, the prescription ''1815.407–70(d)'' is revised to read ''1815.209–70(a)''.

1842.215–78 [Amended]

13. In section 1852.215–78, the prescription ''11815.708–70(a)'' is revised to read ''1815.408–70(a)'', the

provision date ''(December 1988)'' is revised to read February 1998, and in the introductory text to the provision, the reference ''FAR 15.705'' is revised to read ''FAR 15.407–2''.

1852.215–79 [Amended]

14. In section 1852.215–79, the prescription ''1815.708–70(b)'' is revised to read ''1815.407–70(b)''.

1852.215–81 [Amended]

15. In section 1852.215–81, the introductory text, provision date, and in the provision, the first sentence of paragraph (b), and paragraph (d) are revised to read as follows:

1852.215–81 Proposal page limitations.

As prescribed in 1815.209–70(d), insert the following provision:

Proposal Page Limitations

February 1998.

* * * * *

(b) A page is defined as one side of a sheet, 8½″ x 11″, with at least one inch margins on all sides, using not smaller than 12 point type. * * *

* * * * *

(d) If final proposal revisions are requested, separate page limitations will be specified in the Government's request for that submission.

* * * * *

1852.215–82 [Removed]

16. Section 1852.215–82 is removed.

1852.243–70 [Amended]

17. In section 1852.243–70, the clause date ''(MAR 1997)'' is revised to read (Insert month and year of **Federal Register** publication), and in paragraph (d)(1) to the clause, the reference ''FAR 15.804–6'' is revised to read ''FAR 15.403–5'' and the reference ''FAR 15.804–2'' is revised to read ''FAR 15.403–4''.

PART 1853—FORMS

1853.215–2 [Amended]

18. Section 1853.215–2 is redesignated as section 1853.215–70.

1853.215–70 [Amended]

19. In paragraph (a) to the newly designated section 1853.215–70, the reference ''1815.970–1(a)'' is revised to read ''1815.404–470''.

1853.232 [Amended]

20. Section 1853.232 is redesignated as section 1853.232–70.

1853.245 [Amended]

21. Section 1853.245 is redesignated as section 1853.245–70.

1853.249 [Amended]

22. Section 1853.249 is redesignated as section 1853.249–70.

PART 1871—MIDRANGE PROCUREMENT PROCEDURES

1871.103 [Amended]

23. In the first sentence to paragraph (b) of section 1871.103, the phrase ''greater than the simplified acquisition threshold (SAT) (FAR Part 1813) and'' is removed.

1871.104 [Amended]

24. In section 1871.104, paragraph (a) is removed, and paragraphs (b) through (e) are redesignated as paragraphs (a) through (d).

25. In the newly designated paragraph (c), the reference ''FAR 15.601'' is revised to read ''FAR 15.306''.

1871.105 [Amended]

26. In section 1871.105, paragraph (a) is revised to read as follows:

1871.105 Policy.

(a) Under MidRange procedures, pricing requirements shall be determined in accordance with FAR 15.402 and 15.403.

* * * * *

Subpart 1871.3—[Removed]

27. Subpart 1871.3 is removed.

1871.401–3 [Amended]

28. In section 1871.401–3, paragraph (a)(3) is added to read as follows:

1871.401–3 Competitive negotiated procurement not using qualitative criteria.

(a) * * *

(3) See FAR 15.304, FAR 15.305(a)(2), and 1815.305(a)(2) regarding the evaluation of past performance.

* * * * *

1871.401–4 [Amended]

29. In section 1871.401–4, paragraph (a)(4) is added to read as follows:

1871.401–4 Competitive negotiations using qualitative criteria (Best Value Selection).

(a) * * *

(4) See FAR 15.304, FAR 15.305(a)(2), and 1815.305(a)(2) regarding the evaluation of past performance.

* * * * *

1871.401–5 [Amended]

30. In section 1871.401–5, paragraph (b)(2) is revised to read as follows:

1871.401–5 Noncompetitive negotiations.

* * * * *

(b) * * *

(2) The buying team shall request pricing information in accordance with FAR 15.402 and 15.403.

* * * * *

1871.403 [Removed]

31. Section 1871.403 is removed.

1871.604–2 [Amended]

32. In section 1871.604–2, the third sentence to paragraph (a) and paragraph (d) are revised to read as follows:

1871.604–2 Determination of ''Finalists''.

(a) * * * Finalists will include the most highly rated offerors in accordance with FAR 15.306(c)(1) and 1815.306(c)(2). * * *

* * * * *

(d) Offerors determined not to be finalists or not selected for contract award will be electronically notified.

PART 1872—ACQUISITIONS OF INVESTIGATIONS

1872.302 [Amended]

33. In section 1872.302, paragraph (b)(1) is revised to read as follows:

1872.302 Preparatory effort.

* * * * *

(b) * * *

(1) Synopsize the AO in the Commerce Business Daily and on the NAIS prior to release.

* * * * *

1872.403–2 [Amended]

34. In paragraph (c)(2) to section 1872.403–2, the phrase ''and the conditions set forth in 1815.413–2 Alternate II'' is removed.

35. Amend the internal references throughout the NFS as indicated in the following table.

NFS location	Remove	Insert
1803.104–5(a)(i)	1815.612–70	1815.370
1814.201–670(d)	1815.407–70(d)	1815.209–70(a)
1816.405–270(b)(2)(ii)	FAR 15–9 and 1815.9	FAR 15.404–4, 1815.404–4 and 1815.404–470

NFS location	Remove	Insert
1817.503(a)(2)	FAR 15.405	FAR 15.201
1832.409–170(d)	1815.9	1815.404–470
1835.016–70(d)(1)	1815.508–70 and 1815.509–70	FAR 15.608, FAR 15.609, and 1815.609–70
1835.016–70(d)(2)	1815.412–70	1815.208
1835.016–70(d)(3)	FAR 15.413–2(f) and 1815.413–2	1815.207
1835.016–70(d)(3)	FAR 15.601	FAR 15.306
1835.016–70(d)(5)	FAR 15.610(e)(1)	FAR 15.306(e)
1835.016–70(d)(7)	FAR 15.1004	FAR 15.5
1844.201–2(c)(2)	FAR 15.806–2(a)(1) or (2)	FAR 15.404–3(c)
1853.242–70(g)	1815.805–5(a)(1)(E)	1815.404–2(a)(1)(D)
1871.105(f)	FAR 15.406	FAR 15.204
1871.401–3(a)(2)	FAR 52.215–16, Alternate II	FAR 52.215–1
1871.401–3(b)(4)	FAR 15.610	FAR 15.306
1871.401–4(a)(2)	FAR 52.215–16, Alternate II	FAR 52.215–1
1871.402(d)	15.402(i)	FAR 15.203(d)
1871.505 introductory text	FAR 15.1001	FAR 15.503
1871.604–3(a)	FAR 15.610	FAR 15.306
1872.505 introductory text	FAR 15.1004	FAR 15.5
1872.702(b)(1)	1815.412	1815.208
1872.705–1 paragraph VI	FAR 15.8	FAR 15.403–5

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Decision on Designation of Critical Habitat for the Gulf Sturgeon

AGENCIES: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce; and Fish and Wildlife Service, Interior.

ACTION: Notice of decision on critical habitat designation.

SUMMARY: The National Marine Fisheries Service (NMFS) and the Fish and Wildlife Service (FWS), collectively the Services, announce a decision on designation of critical habitat for the Gulf sturgeon (*Acipenser oxyrinchus desotoi*), a federally listed threatened species pursuant to the Endangered Species Act of 1973, as amended. Based on lack of benefit to the species, the Services have determined that critical habitat designation is not prudent. This constitutes the Services' not prudent finding for the designation of critical habitat for the Gulf sturgeon.

DATES: The finding announced in this notice was made on February 24, 1998.

ADDRESSES: Information, comments, or questions should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216; or the Regional Director, U.S. Department of Commerce, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, Florida 33702. The administrative record supporting this decision is available for public inspection, by appointment, during normal business hours at the above addresses.

FOR FURTHER INFORMATION CONTACT: Dr. Michael M. Bentzien, Assistant Field Supervisor, FWS, see **ADDRESSES** section above or telephone 904/232-2580, extension 106; or Ms. Colleen Coogan, NMFS, see **ADDRESSES** section above or telephone 813/570–5312.

SUPPLEMENTARY INFORMATION:

Background

The Gulf sturgeon (*Acipenser oxyrinchus* (=*oxyrhynchus) desotoi*), also known as the Gulf of Mexico sturgeon, is a nearly cylindrical fish with an extended snout, ventral mouth, chin barbels, and with the upper lobe of the tail longer than the lower. Adults range from 1.8 to 2.4 meters (m) (6 to 8 feet (ft)) in length, with adult females larger than males. It is a subspecies of Atlantic sturgeon, *Acipenser oxyrinchus* (=*oxyrhynchus*), and is distinguished from *Acipenser oxyrinchus oxyrinchus*, the East Coast subspecies, by its longer head, pectoral fins, and spleen. The Gulf sturgeon is restricted to the Gulf of Mexico and its drainages, primarily from the Mississippi River to the Suwannee River, within the States of Louisiana, Mississippi, Alabama, and Florida. Sporadic occurrences are known as far west as Texas (Rio Grande), and marine waters in Florida south to Florida Bay (Wooley and Crateau 1985, Reynolds 1993). An anadromous species, the Gulf sturgeon migrates between fresh and salt water.

The Services' involvement with the Gulf sturgeon began with monitoring and other studies of the Apalachicola River population by the FWS Panama City, Florida, Fisheries Assistance Office in 1979. The fish was included as a category 2 species in the FWS December 30, 1982 (47 FR 58454) and September 18, 1985 (50 FR 37958) vertebrate review notices and in the January 6, 1989 (54 FR 554) animal notice of review. Category 2 designation was given at that time to species for which listing as threatened or endangered was possibly appropriate, but for which additional biological information was needed to support a proposed rule. In 1980, the FWS Jacksonville, Florida, Office contracted a status survey report on the Gulf sturgeon (Hollowell 1980). The report concluded that the fish had been reduced to a small population due to overfishing and habitat loss. In 1988, the Panama City Office completed a report (Barkuloo 1988) on the conservation status of the Gulf sturgeon, recommending that the subspecies be listed as a threatened species pursuant to the Act. The Services jointly proposed the Gulf sturgeon for listing as a threatened species on May 2, 1990 (55 FR 18357). In that proposed rule, the Service maintained that designation of